



**Hot Topics: Concurrent Session II**  
Jill Moore, JD, MPH and Aimee Wall, JD, MPH  
February 2016



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**HIPAA HIGHLIGHTS:  
ENTITY**



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**Definitions**

Covered entity	Hybrid entity	Covered functions
<ul style="list-style-type: none"><li>• Health plan</li><li>• Health care clearinghouse</li><li>• Health care provider that transmits health information electronically for HIPAA transactions</li></ul>	<ul style="list-style-type: none"><li>• Carries out both covered and non-covered functions, AND</li><li>• Documents its hybrid entity status and designates its covered functions</li></ul>	<ul style="list-style-type: none"><li>• The things an entity does that makes it a covered entity</li></ul>



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### What goes in the designation?

- Required:
  - Functions or activities that meet the definition of "covered entity"
  - Functions or activities that would create a **business associate** relationship if performed by a separate legal entity
- Optional:
  - The agency may include functions or activities that do not meet either of the above criteria if it chooses



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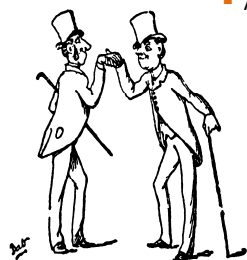
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### What is a business associate?



- A person or entity that
  - creates, receives, maintains, or transmits PHI on behalf of a covered entity (for a HIPAA covered function or activity)
  - provides services involving PHI (legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial)



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### What is the "entity" that counts?

#### County

- If the agency is a county department, then the county is the covered entity
  - County health department
  - County consolidated human services agency
- The county should be a hybrid entity, and the agency may be a hybrid within a hybrid

#### Agency

- If the agency is a legal entity that is separate from a single county, then the agency is the covered entity
  - District health department
  - Public health authority
- The agency itself may be a hybrid entity



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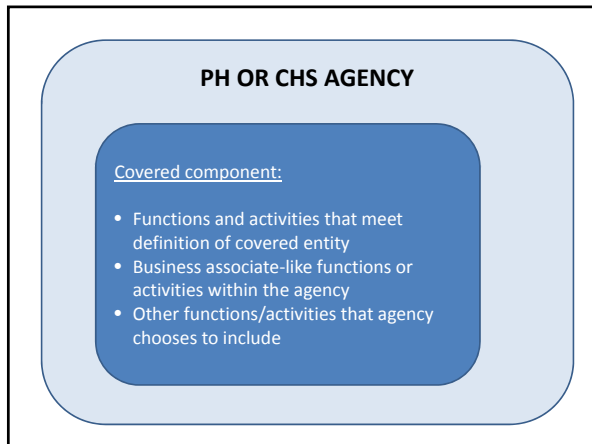
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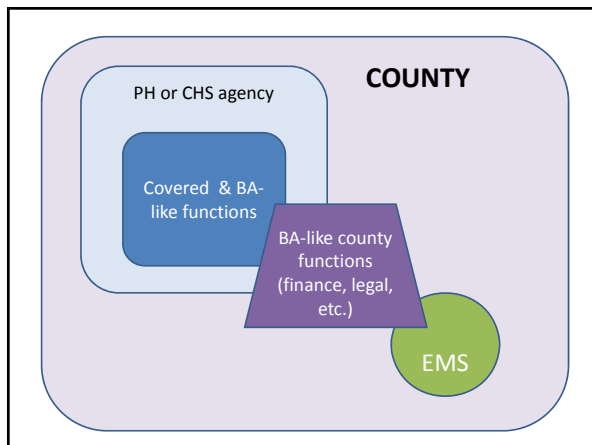
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### Hybrid entity designation

- Document it – write it down!
- Retain it – no requirement to file it with anyone, but should know where to find it.
- Use it –
  - to inform HIPAA policies and procedures
  - to ensure appropriate staff training
  - to help answer questions about uses and disclosures of information, breaches, etc.
- Review it periodically and update as needed.

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### Risk assessment

<b>What it is:</b> <ul style="list-style-type: none"><li>Analysis you undertake to demonstrate low probability that PHI was compromised</li><li>Demonstrated low probability of compromise defeats the presumption that unauthorized acquisition, access, use, or disclosure was a breach</li></ul>	<b>Minimum factors:</b> <ul style="list-style-type: none"><li>Nature and extent of PHI, including types of identifiers &amp; likelihood of re-identification</li><li>Unauthorized person who received disclosure or used PHI</li><li>Whether PHI was actually acquired and viewed</li><li>Extent to which any risk to PHI has been mitigated</li></ul>
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### Safe harbor

- Don't have to notify if:
  - PHI was encrypted, or
  - PHI was disposed in keeping with HHS guidance on secure disposal



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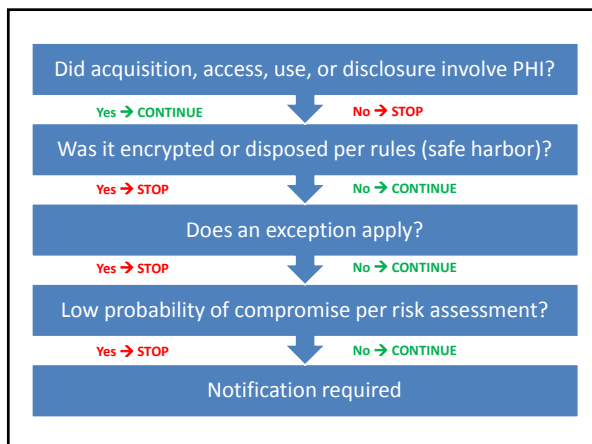
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### Notification prep: date check



- If required to notify, must do so “without unreasonable delay” – no later than 60 days after breach discovered
- Breach deemed discovered even if no actual knowledge, if reasonable diligence would have revealed it




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Recipients & timing

- Affected individuals – within 60 days
- US DHHS
  - ≥ 500 individuals – contemporaneous
  - < 500 - annual report
- Media if > 500 – within 60 days.

Content

- Description of incident
- PHI involved
- Advice to individuals to minimize harm
- Actions taken to investigate and mitigate
- Contact information for more info

Method

- Written letter (standard)
- Email if prior agreement to email notification obtained
- Telephone if urgent (also send written)

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### State law on breaches

- Breach: unauthorized access to or acquisition of records or data with “personal information,” which means name plus something that could be used to commit ID theft or threaten finances (SSN, DL number, financial account numbers, etc.)
- State law requires breach notification, if:
  - Illegal use of the information has occurred, or
  - Illegal use of the information is reasonably likely to occur, or
  - The incident creates a material risk of harm to a consumer.




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### What else should you do?

- ✓ **Investigate** the circumstances
- ✓ **Mitigate** harm to individuals
- ✓ **Account** for disclosures (include in accounting log or other mechanism you use to provide accounting to individuals who request it)
- ✓ **Follow-up with employees** – apply sanctions, review training

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### HIPAA sanctions policy

- Must have and apply appropriate sanctions against workforce members who violate HIPAA or your entity's privacy policies and procedures (45 CFR 164.530(e))
- What is your sanctions policy?



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### Breach resources

- HIPAA regulations: 45 CFR 164, subpart D (sections 164.400 – 164.414)
- US DHHS resources:  
<http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/>

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## HIPAA HIGHLIGHTS: TEXT MESSAGING

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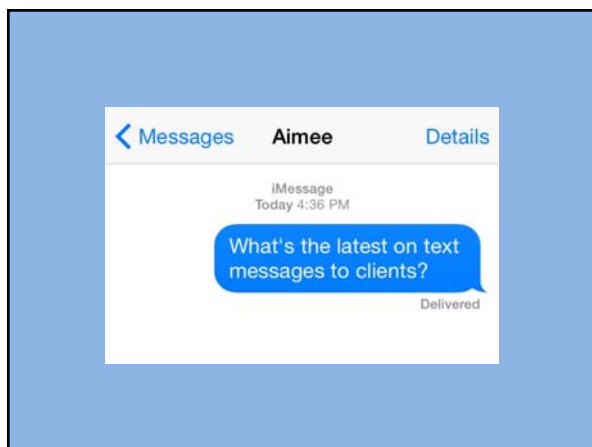
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### HIPAA Security Rule



- Applies if texts contain protected health information
- All ePHI must be protected by technical, physical, and administrative safeguards
- Cannot address this issue with an authorization form – need a policy that satisfies security rule's requirements**

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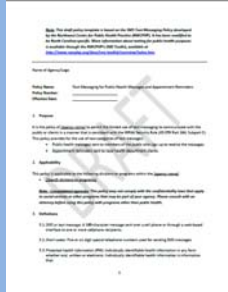
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## Template policy

- Conduct a risk analysis before adopting policy
- Customize policy to your agency
- Train workforce before implementing policy




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## LOCAL GOVERNANCE




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## Who are we talking about?

- Appointed governing boards
  - Boards of health (PH)
  - Social services boards (DSS)
  - Consolidated human services boards (CHS)
- Elected governing boards
  - Boards of county commissioners (BOCC) that have assumed the powers and duties of one or more of the above
- Advisory boards




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### Agency employees

- Appointed boards have no authority to
  - Hire, supervise, or fire employees
  - Establish minimum qualifications
  - Establish salary schedule
  - Adopt personnel policies
  - Hear employee grievances or appeals\*
- Exception: District boards of health and public health authorities



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### Key differences

- Appointment
- Size and composition
- Removal
- Vacancies
- Fees
- Budget
- Appointing agency director
- Rulemaking
- Adjudications
- Accreditation-related duties
- Social services program related duties
- Access to records
- "Assure compliance"

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### Key differences

- Appointment
  - PH and CHS: BOCC
  - DSS: BOCC, SS Comm'n, and DSS board
- Size and composition
  - DSS: 3-5 members
  - PH: 11 members
  - District PH: 15-18 members
  - CHS: Up to 25 members
  - PH, District, and CHS: Statutorily defined composition

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### Key differences

Removal	<ul style="list-style-type: none"><li>• PH and CHS: Statutory criteria</li><li>• DSS: No criteria</li></ul>
Vacancies	<ul style="list-style-type: none"><li>• PH: If no one qualified to serve in professional position, may substitute member of the public</li><li>• CHS: No provision</li><li>• DSS: No provision (also no professions req'd)</li></ul>

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### Key differences

Fees	<ul style="list-style-type: none"><li>• PH and CHS may approve fees for some services based on plan proposed by director; must be approved by BOCC</li><li>• DSS: has no role in setting fees for services</li></ul>
Budget	<ul style="list-style-type: none"><li>• DSS: Present or transmit to BOCC</li><li>• PH: Informal role (District BOH approves)</li><li>• CHS: Plan and recommend</li></ul>

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### Appointing agency director

DSS	PH	CHSA
<ul style="list-style-type: none"><li>• Board appoints</li></ul>	<ul style="list-style-type: none"><li>• Board appoints but must</li><li>• Consult with BOCC</li><li>• Send application to State</li></ul>	<ul style="list-style-type: none"><li>• County manager appoints with advice and consent of CHS board</li></ul>

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### Rulemaking authority

- PH and CHS have authority to make rules “necessary to protect and promote the public health”
  - Administrative rule = law
  - Enforceable (misdemeanor, injunction)
  - Different from a county ordinance

GS 130A-39



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### Rulemaking authority

- General limitations: Rules must
  - Be related to promotion or protection of health
  - Be reasonable in light of risk addressed
  - Not violate law/constitution
  - Not be discriminatory
  - Not make policy distinctions traditionally reserved for legislative bodies
- Specific limitations:
  - Food and lodging, on-site wastewater, smoking



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### Rules v. policy?

- A policy is not law but it can have an impact in the community
- All local human services boards have a role in shaping agency policy
  - Budget development or review
  - Program review or quality assurance
  - Recommending or adopting agency policies
- Limitations based on federal and state law



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### Adjudications

- PH and CHS boards may hear appeals
  - The agency's enforcement of LOCAL rules
  - The agency's imposition of administrative penalties for violations of
    - Laws governing smoking in public places and
    - Local on-site wastewater rules.



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### Accreditation-related duties

- PH: Accreditation regulations require board to do certain things, such as
  - “be trained regarding...service on the board.”
  - “assure the development, implementation, and evaluation of ... services and programs to protect and promote the public's health.”
  - “participate in the establishment of public health goals ....”
- May not need to do all for accreditation
- May delegate certain duties to advisory board

10A NCAC 48B

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### SS program-related duties

- DSS and CHS boards have several program-specific duties related to fraud investigations, program eligibility, and program policy (e.g., waiting list)
  - Some are ultimately delegated back to the director

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### Access to records

DSS and CHS	PH and CHS
<ul style="list-style-type: none"><li>• Statutory right to examine any records related to applications for and provision of public assistance and social services</li><li>• May not disclose any information acquired</li><li>• GS 108A-11</li></ul>	<ul style="list-style-type: none"><li>• May have limited authority to have access to <i>some</i> protected health information (PHI) under HIPAA as an oversight entity</li><li>• 45 CFR 164.512(d)</li></ul>

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### Access to records

But just because a board CAN get access, SHOULD it? Ask:

1. Can the objective be achieved with de-identified information?
2. Is the board getting the minimum information necessary?

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### “Assure compliance”



- CHS boards have a unique duty to “assure compliance with laws related to State and federal programs.”

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**BOCC as governing board**

- Process
  - Requires notice and public hearing
  - Flip-flopping OK
- Same powers, duties, and authority
  - Exceptions include composition requirements, removal authority
- Approaches to managing board business vary

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**ADVISORY BOARDS**



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**Allowed or required?**

- If BOCC assumes the powers and duties of a PH or CHS board, it must appoint an advisory committee for health
  - Composition requirements mirror board of health
  - May be larger to integrate other expertise
- BOCC is allowed to establish other advisory committees as well
  - Flexibility to meet community's needs

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### Role of advisory committees

- No guidance or specific grant of authority from state law
- Exception
  - PH accreditation expressly allows certain duties to be delegated from the local board of health to an advisory committee, such as
    - Review and report on community data
    - Receive community input
    - Foster partnerships with the community
    - Advocate for public health



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### Contact information

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<http://bit.ly/SOG-DSS>  
<http://bit.ly/SOG-CHSA>



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